

**REMARKS**

The application has been carefully reviewed in light of the Office Action dated October 26, 2005. Claims 1-6, 8, 10-17 and 20-22 remain pending in this case. Applicants reserve the right to pursue the original claims in this application and in other applications.

Claims 1-6, 8, 10-17 and 20-22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Gabbita et al. (U.S. Patent No. 6,349,238) in view of Official Notice. Applicants respectfully request reconsideration.

Claim 1 recites an appointment setting system for assigning a service order to a network resource comprising, *inter alia*, an appointment negotiator operative to receive a service order from a customer and deliver an appointment confirmation and an appointment rejection to the customer, an appointment control system operative to assign an appointment associated with the service order to the network resource and send an appointment confirmation to the appointment negotiator, in response to a determination that the network resource can fulfill the service order, determine whether the change affects the appointment associated with the service order, in response to a determination that a change to the dispatch database record associated with the network resource has occurred, and automatically reassign the appointment associated with the service order to another network resource, in response to a determination that the change to the dispatch record associated with the network resource affects the appointment associated with the service order.

Claim 11 recites a method for setting an appointment, the method comprising, *inter alia*, sending an appointment confirmation to the appointment negotiator and assigning an appointment associated with the service order to the network resource, in response to a determination that the network resource can fulfill the service order, updating a dispatch database to reflect a reduction in a capacity value associated with the

network resource, in response to sending the appointment confirmation, and if the change in the availability of the network resource affects the appointment associated with the service order, then automatically reassigning the appointment to another network resource.

Claim 22 recites a method for setting an appointment, the method comprising, *inter alia*, sending an appointment confirmation to the appointment negotiator, in response to a determination that the network resource can fulfill the service order, updating the dispatch database record to reflect the assignment of the appointment to the network resource, in response to sending the appointment confirmation, and automatically reassigning the appointment to another network resource, in response to a determination that the change affects the appointment.

Gabbita discloses a means to coordinate all of the tasks and activities related to order processing among the various entities within the telecommunications company. When a task associated with a Service Order is ready to begin, notification is sent to the appropriate computer systems associated with the task. Similarly, when the task is complete, the system is automatically notified, so that the next task can begin. See Gabbita column 1 line 65 through column 2 line 8. Gabbita also discloses a means for notifying resources about scheduled workflow activities. In response to such a notification, the resource respond by rejecting the assignment or indicating the assignment is complete, “LSAT 102 communicates with the relevant computer systems, such as computer systems 106-114, involved in processing the order. This is accomplished with the use of a messaging system protocol compatible with the existing computer systems 106-114 that are in use by the Company. The messaging system provides notification to the various computer systems and receives confirmation therefrom, as tasks are completed and/or rejected (see next step 212).” See Gabbita column 11, lines 35-43. Gabbita also discloses that authorized users can reassign Work Steps to a different individual human Resource or a different organizational group Resource. See Gabbita column 18, lines 51-53.

The Office Action fails to establish a *prima facie* case of obviousness for the subject matter of claims 1, 11, and 22. Courts have generally recognized that a showing of a *prima facie* case of obviousness necessitates three requirements: (i) some suggestion or motivation, whether in the references themselves or in the knowledge of a person of ordinary skill in the art to modify the reference or combine the reference teachings; (ii) a reasonable expectation of success; and (iii) the prior art references must teach or suggest all claim limitations. See e.g., In re Dembiczak, 175 F.3d 994 (Fed. Cir 1999); In re Rouffet, 149 F.3d 1350, 1355 (Fed. Cir. 1998); Pro-Mold & Tool Co. v. Great Lakes Plastics, Inc., 75 F.3d 1568, 1573 (Fed. Cir. 1996). The references used in the Office Action fail at least the third prong of obviousness in that the prior art references do not teach or suggest all claim limitations.

Gabbita fails to disclose all the recitations of claims 1, 11 and 22. Specifically, Gabbita fails to disclose an appointment negotiator operative to receive a service order from a customer and deliver an appointment confirmation and an appointment rejection to the customer, an appointment control system operative to assign an appointment associated with the service order to the network resource and send an appointment confirmation to the appointment negotiator, in response to a determination that the network resource can fulfill the service order, determine whether the change affects the appointment associated with the service order, in response to a determination that a change to the dispatch database record associated with the network resource has occurred, and automatically reassign the appointment associated with the service order to another network resource, in response to a determination that the change to the dispatch record associated with the network resource affects the appointment associated with the service order, as recited in claim 1. Gabbita fails to disclose delivering an appointment confirmation or rejection to a customer.

Gabbita fails to disclose sending a confirmation to an appointment negotiator in response to a determination that the network resource can fulfill and order. Gabbita merely allows a resource to reject a task or indicate that the resource has completed the task. Gabbita also fails to disclose automatically reassigning the appointment associated with the service order to another network resource, in response to a determination that the

change to the dispatch record associated with the network resource affects the appointment associated with the service order. The Office Action indicates that Official Notice has been taken reject this recitation.

Applicants respectfully disagree with this assertion and submit that the Office Action has failed to establish a *prima facie* case of obviousness. In order to make a *prima facie* case of obviousness, the Examiner must set forth prior art which teach or suggest every claim limitation. (*See* MPEP § 2143.) There is nothing in the prior art cited in the Office Action that discloses all the recitations of claims 1, 11 and 22. Accordingly, independent claims 1, 11 and 22 patentably distinguish the present invention over the cited art, and Applicants respectfully request withdrawal of this rejection of claims 1, 11 and 22.

If the Examiner continues to rely on this unsupported contention, Applicants respectfully request the Examiner to provide support. See, In re Zurko, 258 F.3d 1379, 59 U.S.P.Q.2d 1693 (Fed. Cir. 2001) (holding that the USPTO must point to some concrete evidence in the record to support core factual findings in a determination of patentability); Memorandum by Stephen G. Kunin, Deputy Commissioner for Patent Examination Policy (February 21, 2002)(stating that it is never appropriate to rely on common knowledge without evidentiary support as sole or principal evidence on which to base rejection); 37 C.F.R. § 1.104 (providing that when a rejection in an application is based on facts within the personal knowledge of an Examiner, the data should be stated as specifically as possible, *and the facts must be supported*, when called for by the applicant, by an affidavit from the Examiner); MPEP § 2144.03 (providing that the Examiner may only take official notice of facts outside of the record which are capable of instant and unquestionable demonstration as being "well-known" in the art and, if the Applicant traverses such an assertion, the Examiner *should cite a reference* in support of his or her position.).

However, even assuming *arguendo* that Official Notice could be supported, the combination of Gabbita and Official Notice fails to disclose all the recitations of claim 1. Accordingly, the rejection of claim 1 should be withdrawn.

Gabbita fails to disclose sending an appointment confirmation to the appointment negotiator and assigning an appointment associated with the service order to the network resource, in response to a determination that the network resource can fulfill the service order, updating a dispatch database to reflect a reduction in a capacity value associated with the network resource, in response to sending the appointment confirmation, and if the change in the availability of the network resource affects the appointment associated with the service order, then automatically reassigning the appointment to another network resource, as recited in claim 11. As mentioned above, Gabbita fails to disclose sending an appointment confirmation to the appointment negotiator. Gabbita merely allows a resource to reject a task or indicate that the resource has completed the task. Because Gabbita does not disclose this confirmation, Gabbita cannot disclose updating a dispatch database to reflect a reduction in a capacity value associated with the network resource, in response to sending the appointment confirmation. The Office Action acknowledges that Gabbita does not teach or suggest automatically reassigning the appointment to another network resource. Accordingly, the rejection of claim 11 should be withdrawn.

Gabbita fails to disclose sending an appointment confirmation to the appointment negotiator, in response to a determination that the network resource can fulfill the service order updating the dispatch database record to reflect the assignment of the appointment to the network resource, in response to sending the appointment confirmation, and automatically reassigning the appointment to another network resource, in response to a determination that the change affects the appointment. As mentioned above with respect to claim 11, Gabbita fails to disclose such recitations. Accordingly, the rejection of claim 22 should be withdrawn.

Thus, Gabbita and Official Notice whether considered alone or in combination fail to disclose all the recitations of claims 1, 11 and 22. Accordingly, claims 1, 11 and 22 are allowable over Gabbita and Official Notice, or a combination thereof. Claims 2-6, 8 and 10 depend from claim 1, and claims 12-17 and 20-21 depend from claim 11, and are allowable over the combination Gabbita and Official Notice along with claims 1 and 11, for the reasons mentioned above and on their own merit.

**CONCLUSION**

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned please contact Applicants' undersigned attorney at 404.954.5040.

Please charge any additional fees or credit any overpayment to Deposit Account No. 13-2725.

Respectfully submitted,  
MERCHANT & GOULD, LLC

Date: January 13, 2006



\_\_\_\_\_  
Devon K. Grant  
57,036

Merchant & Gould  
P.O. Box 2903  
Minneapolis, Minnesota 55402-0903  
Telephone: 404.954.5100

**39262**  
PATENT TRADEMARK OFFICE